

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHELLY BEANE)	
Claimant)	
VS.)	
)	Docket No. 270,896
INTERNATIONAL ELEVATOR CO.)	
Respondent)	
AND),	
)	
COMMERCIAL UNION INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appeal Administrative Law Judge Nelsonna Potts Barnes' December 20, 2001, preliminary hearing Order.

ISSUES

The Administrative Law Judge (ALJ) granted claimant's request for preliminary benefits of medical treatment and temporary total disability compensation.

On appeal, respondent and its insurance carrier, Commercial Union Insurance Company (Commercial), contends the ALJ erred in awarding claimant preliminary benefits because claimant's current need for medical treatment and the reason claimant is unable to continue to work for respondent is not the result of injuries claimant suffered in a May 14, 2001, accident. But instead, they allege claimant's need for medical treatment and for temporary total disability compensation is the result of a series of new accidents caused by claimant's regular work activities after claimant was released to return to work following her May 14, 2001, accident on August 30, 2001.

In contrast, claimant contends her current need for medical treatment and for temporary total disability benefits is the result of her injuries she suffered in a traumatic accident that occurred on May 14, 2001, while employed by the respondent. Thus, claimant requests the Appeals Board (Board) to affirm the ALJ's preliminary hearing Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the arguments contained in parties' briefs, the Board makes the following findings and conclusions:

The facts of this case are generally not in dispute. On May 14, 2001, claimant was employed by respondent as a welder. On that date, claimant suffered multiple injuries when she was run over by a forklift truck. Claimant testified that she fractured her pelvis, tailbone and hip. Additionally, she also sustained a ruptured bladder as a result of the work-related accident.

Respondent voluntarily provided claimant with medical treatment for her multiple injuries. First, with emergency care in a Wichita, Kansas hospital and then through orthopedic surgeon Robert L. Eyster, M.D., of Wichita, Kansas. Dr. Eyster treated claimant's injuries with conservative medical treatment from May 31, 2001, through August 30, 2001. This conservative treatment included physical therapy and claimant was required to ambulate with assistive devices first with a walker and then with two canes. On August 30, 2001, Dr. Eyster released claimant to return to her regular work without restrictions. As a result of her multiple injuries, Dr. Eyster assessed claimant with a 2 percent whole body permanent functional impairment.

After claimant returned to work, she testified her symptoms worsened to the point she requested to return to see Dr. Eyster. Respondent made an appointment for claimant and she returned and saw Dr. Eyster on October 16, 2001. After taking a history of claimant's complaints and completing a physical examination of claimant, Dr. Eyster recommended that claimant return to physical therapy for deep heat and ultrasound treatments. The doctor returned claimant to work, but this time, with restrictions of a 25 pound single lifting limit, 10 pound repetitive lifting limit, no walking over 300 yards, no squatting over three times per hour, no repetitive stair climbing or prolonged sitting. Claimant returned to respondent with those restrictions and respondent could not accommodate the restrictions. At that time, Commercial also decided not to provide claimant with any further medical treatment and denied her claim.

Commercial's workers compensation insurance coverage of respondent expired on July 13, 2001. Commercial, in its brief before the Board, describes the issue for Board review as, "Whether the claimant has suffered a new accident arising out of and in the course of her employment as defined by K.S.A. 44-501(a)." Commercial goes on and argues that since its coverage expired on July 13, 2001, and claimant suffered a new series of accidents after she returned to work on September 1, 2001, then respondent's subsequent workers compensation insurance carrier is liable for claimant's current need for medical treatment and payment of temporary total disability compensation.

Here, the Board concludes there is no dispute concerning the compensability of the claim. The dispute that arises in this case is whether claimant's need for preliminary

hearing benefits is the result of her initial May 14, 2001, traumatic accident or whether such need is the result of her each and every day work activities after she returned to work on September 1, 2001, which constitutes a new and separate accident. The Board, therefore, concludes Commercial's arguments pertain to what date of accident should control for the purpose of determining which insurance carrier is liable for claimant's current need for medical treatment and temporary total disability benefits. The question of claimant's date of accident or the insurance carrier's liability does not give rise to disputed issues involving the compensability of the claim.¹

The Board only has jurisdiction to review preliminary hearing findings in cases where one of the parties allege that the ALJ exceeded his or her jurisdiction.² This jurisdiction includes the specific issues identified in K.S.A. 44-534a(a)(2) that raise questions only as to the compensability of the claim.³ Here, the issue is whether claimant's date of accident is before or after July 13, 2001, the expiration date of Commercial's workers compensation insurance coverage. That issue does not alter the fact that claimant's injuries are compensable as the result of injury by accident or accidents arising out of and in the course of her employment with respondent and is, therefore, not reviewable.

The Board concludes, at this juncture of the proceedings, it does not have jurisdiction to review the ALJ's findings contained in her preliminary hearing Order and, therefore, the respondent's appeal is dismissed.

WHEREFORE, it is the finding, decision, and Order of the Board that it does not have jurisdiction to review the findings contained in ALJ Nelsonna Potts Barnes' December 20, 2001, preliminary hearing Order and the respondent's appeal should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of March 2002.

BOARD MEMBER

¹ See Ireland v. Ireland Court Reporting, WCAB Docket Nos. 176,441 and 234,974 (February 1999) and Linville v. Grandview Products Co., Inc., WCAB Docket No. 230,739 (June 1998).

² See K.S.A. 44-551(b)(2)(A).

³ See Carpenter v. National Filter Service, 26 Kan. App. 2d 672 ,676, 994 P.2d 641 (1999).

c: Joseph Seiwert, Attorney for Claimant
Kendall Cunningham, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Workers Compensation Director